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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2021/2022

UCL3612 – COMPANY LAW I

(All Sections / Groups)

29 NOVEMBER 2021

Reading Time: 9.15 a.m. – 9.30 a.m.

(15 Minutes)

Answering Time: 9.30 a.m. – 12.30 p.m.

(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This question paper consists of 5 pages with 5 questions only.
3. Answer **ALL** questions in **PART A** and **TWO (2)** questions only in **PART B**. Attempt **FOUR** out of FIVE questions. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPY** of the following statute into the exam venue:
 - i) Companies Act 2016

“Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

Answer ALL questions from Part A and TWO (2) questions ONLY from Part B.

PART A (50 MARKS): ANSWER ALL QUESTIONS

QUESTION 1

Becky and Anderson are Malaysian citizens. Both of them resides in Taman Ampang Jaya, Kuala Lumpur. Becky and Anderson are interested to venture into the business of interior home design services. Thus, they wish if they could work together but are unsure as to which business structure would be most appropriate.”. They seek your advice regarding which business structure would be most suitable, bearing in mind:

- a) they wish to avoid significant levels of formality and regulation;
- b) they want to have flexibility in establishing the procedures by which the business is to be run;
- c) they want to be able to run their own affairs;
- d) they want to avoid personal liability for the debts and liabilities of the business;
- e) the process of creating the business should be relatively cheap and quick;
- f) they do not want to invest significant amounts of their own capital in settling up the business and will probably wish to raise capital from outside sources;
- g) they wish to take on employees.

Discuss to what extent each of the various business structure fulfil all or some of the aims and advise Becky and Anderson which business structure would be most suitable for their business.

(Total: 25 marks)

Continued...

QUESTION 2

Company A, has been marketing computer software. Company B on the other hand, runs company training college. Both Company A and Company B entered into an agreement to form a new company, Company C.

Company C is to provide one-site computer training for retail businesses that use Company A's software. Smith, a director of Company A and Lois, a director of Company B are authorised by the boards of directors of their respective companies to, as a matter of urgency, take whatever steps which are necessary to form Company C and to secure training contracts on its behalf.

Smith and Lois instructed the corporate secretary cum advocate and solicitor to register a company. More quickly than they anticipate, they manage to attract a large training job from Company Y. Purportedly on behalf of Company C, they execute a contract with Company Y. They have told the Company Y's representatives that Company C is not yet registered. The parties agree to include a clause that provides that if Company C (or a company reasonably identifiable with it) is not registered within two months of the date of the contract, then Company Y can rescind the contract.

In the light of each of the following situations and questions:

- a) Company C is registered a month after the contract is executed. Advise Smith and Lois the steps that they may take to ensure that:
- (i) the contract with Company Y is binding on Company C; and
 - (ii) neither of them is personally liable for the actions of Company C under the contract.

(10 marks)

- b) Company C is not registered within the two-month period. What remedies does Company Y have and against whom?

(8 marks)

- c) Smith and Lois do procure the registration of Company C. Company A, Company B and two individuals, C and D become its shareholders. Smith and Lois organise the transfer of assets from their own company, Company SL, to company C at grossly inflated values. Company C becomes insolvent and a liquidator is appointed. Once registered, neither Smith and Lois have taken any role in the management of Company C. Despite this, what remedies might the liquidator pursue against Smith and Lois?

(7 marks)

(Total:25 marks)

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PART B (50 MARKS): ANSWER ANY TWO (2) QUESTIONS ONLY**QUESTION 3**

Suga, Nam Joon, Jimin and Jin are the directors of record labels and entertainment company, Hybe Corporation Sdn. Bhd. (“Hybe”). Jin who holds 80% of the shares issued by Hybe was appointed as its Managing Director. The terms of Hybe’s employment contract read as follows:

“The Employee hereby agrees, that during the term of employment and in any event, six (6) months after the Employee’s resignation, to refrain from engaging in any business or company that is competitive with the Employer’s business or work that competes with the Company’s business activity and shall not directly or indirectly solicit with the company’s customers.....”.

In January 2021, Hybe’s board of directors were made known that 500 of its shares were issued without the approval of the shareholders. When confronted, Jin confessed that the issuance was made in order and his consent alone for the issuance of shares is sufficient considering the fact that he is the managing director of Hybe.

As a result, another 200 shares authorised by Jin were issued without the approval of Hybe’s shareholders in March 2021. Dissatisfied, Jimin decided to leave Hybe. In May 2021, after his resignation as director, he incorporated a record labels and entertainment company by the name Soo Man Entertainment Sdn. Bhd. (“SM Entertainment”). Jimin was in charge of managing the business of this company, but he was neither the shareholder nor the director of SM Entertainment. In fact, his best friends, YoonA and Tiffany were the only shareholders.

In July 2021, Hybe was informed that the new competing company bearing the name, SM Entertainment was actually consulted by their former director, Jimin. It was no surprise to Hybe that most of their artists have not renewed the contracts and changed their agency from Hybe to SM Entertainment.

With reference to the Companies Act 2016 and decided cases, advise all relevant parties on their rights and liabilities.

(Total: 25 marks)

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QUESTION 4

The constitution of Kerteh Sdn. Bhd. (“KSB”) provides that its main business is to construct, develop and maintain a provincial known as Bandar Seri Puteri, located at the outskirts of Negeri Sembilan. Three directors were duly appointed through nomination by KSB namely, Jib, Din and Ismail.

Due to the pandemic of Covid-19 which eventually affects the economy, KSB finds that the most possible way to recover its business is to invest in new opportunities. KSB then decided to diversify its business to do food and beverages business.

In March 2021, KSB entered into a contract with Ikea Sdn. Bhd. (“Ikea”) to procure 3 tonnes of raw meat and drinks for its business. The shareholders of KSB were not happy with the contract entered into by KSB and Ikea. In fact, KSB shareholders claimed that the contract was invalid. As a result, KSB refused to pay for the products and now, Ikea wishes to sue KSB for breach of contract.

In June 2021, at the general meeting, the shareholders addressed that they wished to alter KSB’s constitution. The alteration of the constitution is to reflect KSB’s new business and to avoid similar issue happening in the future.

With reference to the Companies Act 2016 and decided cases, advise the parties on the relevant issues above.

(Total: 25 marks)

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QUESTION 5

Mr. Park and Mrs. Da-Mi, husband and wife and their sons, Joo-Young and Soo-Young are directors of Vincenzo Sdn. Bhd., a drone technology solutions provider. Mr. Park was involved in a tragic accident, and he was left paralysed. Unable to fully commit to the business, Mr. Park decided to resign as the director of the company and continues to provide advice and guidance to the board of directors. His sons, Joo-Young and Soo-Young carried on running the business together with Uncle Jho. Mrs. Da-Mi remained a director but as she is currently staying in Italy to be with her mother, she took no part in the running of the business.

Both Joo-Young and Soo-Young perpetrated a fraud which damaged the company and were convicted. Due to their fraudulent action, unethical and unprofessional behaviour, the company's reputation, and business was affected.

Uncle Jho alleges that:

1. Joo-Young and Soo-Young should no longer be the directors of Vincenzo Sdn. Bhd.; and
2. Mr. Park and Mrs. Da-Mi should be made liable for breach of their duties as directors for failing to ensure that the business is being properly managed.

Mr. Park and his family are liable for breach of their duties as directors. Mr. Park argued that he is no longer part of the board of directors and Mrs. Da-Mi argued that she should not bear the full responsibility of a director as she was not aware of the wrong-doings.

Advise Vincenzo Sdn. Bhd.

(Total: 25 marks)

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